

LEGAL PROFESSION BILL 2004

EXPLANATORY NOTES

General Outline

Objectives of the Legislation

The Bill provides for reforms to the regulation of the legal profession in the interests of the administration of justice and the protection of consumers of legal services. It also facilitates legal practice on a national basis.

Reasons for the objectives and how they will be achieved

The Government has conducted a number of reviews in relation to the regulation of the legal profession. Papers were released for public consultation in 1998 and 1999 and a package of reforms was announced in December 2000. A National Competition Policy review of the existing legal practice legislation was later conducted and an issues paper was released in November 2001. A project is also being undertaken through the Standing Committee of Attorneys-General (SCAG) on national model laws for legal profession regulation (“national model laws”). In 2002, further to criticism of its complaint-handling function, the law society commissioned a report by retired Chief Judge, Mr Pat Shanahan and the Attorney-General and Minister for Justice requested a report from the Legal Ombudsman.

These reviews have identified the following outcomes as desirable:

- a consistent national approach in relation to the admission of legal practitioners;
- statutory basis for the regulation of barristers;
- facilitating legal practice by interstate legal practitioners in Queensland;
- setting and enforcing a high level of professional ethics and standards;
- greater independence, accountability and transparency in the complaints and disciplinary processes for lawyers;

- in the context of national practice, the recognition of disciplinary action in other jurisdictions and a consistent approach in the areas of trust accounts, client agreements and fidelity and professional indemnity cover;
- greater integrity, consistency and independence as part of the cost review process;
- allowing lawyers to utilise new business structures, namely, incorporated legal practices and multidisciplinary practices; and
- a scheme for the registration of foreign lawyers.

National model laws for the regulation of the legal profession are being developed through the Standing Committee of Attorneys-General (“the national model laws”). Where the drafting of national model laws was not finalised at the end of last year, the Government decided to implement its legal profession reforms in two stages.

The *Legal Profession Act 2003* (yet to be proclaimed) is the first stage of the Government’s legal profession reforms. It provides for reforms in the areas of admission, national practice, conduct rules, complaints and discipline, the financial arrangements and incorporated legal practices.

The national model laws are close to being finalised for public release and there have been considerable drafting changes in some areas from the model on which the *Legal Profession Act 2003* was based. Therefore, for simplicity, the Bill incorporates and replaces the *Legal Profession Act 2003* including changes to the text for consistency with the current national model laws.

It also includes further Parts from the national model laws providing for:

- the external administration of law practices where the appointment of a supervisor (of trust accounts), manager (of the practice) or receiver is warranted e.g. due to the insolvency or death of a practitioner;
- a consistent national framework for determining the fidelity fund that is liable in the event of a claim including for defaults affecting a number of jurisdictions and for consistent cover and exclusions from claim;
- regulatory matters in respect of multi-disciplinary practices corresponding with the incorporated legal practice provisions in the *Legal Profession Act 2003*;

- the scheme for registration of foreign lawyers and recognition of foreign lawyers registered in other States and Territories.

The remaining Parts of the national model laws in relation to trust accounts, client agreements and cost review are proposed to be progressed in further Bills later in the year.

The Bill moves provisions relating to the establishment of the Queensland Law Society to the new Act and provides for some changes requested by the Society in relation to its Council.

Matters previously under the *Legal Profession Act 2003*

The following proposals from the *Legal Profession Act 2003* are again included in the Bill.

- The Bill provides for the admission of legal practitioners. Solicitors and barristers will not be admitted separately as at present. Academic qualifications and practical legal training qualifying applicants for admission in other jurisdictions that apply similar minimum criteria will be recognised.
- Only Australian legal practitioners, those holding practising certificates (local or interstate), will be permitted to engage in legal practice in Queensland. The restriction will not apply to government legal officers engaged in government work. The Bill provides for local practising certificates for solicitors to be issued by the law society and for practising certificates for barristers to be issued by the Bar Association of Queensland (“bar association”). Lawyers admitted in other jurisdictions will be able to apply for local practising certificates without having to be first admitted in Queensland. Interstate legal practitioners will be allowed to practise in Queensland without a local practising certificate.
- There will be greater independence, accountability and transparency in the complaints and disciplinary processes for lawyers. The Bill provides for the new independent statutory office of the Legal Services Commissioner to receive and manage the investigation of complaints against lawyers and prosecute professional conduct charges in appropriate cases. Charges for minor professional conduct breaches will be heard by the Legal Practice Committee, appointed by the Governor in Council. More serious matters, potentially involving suspension, striking

off or serious fines would be heard by the Legal Practice Tribunal, chaired by a Supreme Court Judge assisted by a professional member and a lay member.

- The scheme is based on each incorporated legal practice having a “legal practitioner director” who has specific responsibilities in relation to the provision of legal services by the corporation. The legal practitioner director and employee legal practitioners will retain their professional obligations.
- Incorporated legal practices will be facilitated on a basis that is consistent with the proposals in the national model laws. That scheme is based on each incorporated legal practice having a “legal practitioner director” who has specific responsibilities in relation to the provision of legal services by the corporation. The legal practitioner director and employee legal practitioners will retain their professional obligations.
- Responsibility for the statutory deposit scheme in respect of solicitors’ trust accounts and arrangements for the payment of interest on those accounts will be transferred from the law society to the Department of Justice and Attorney-General (“the Department”). Interest on statutory deposit accounts will be paid to the Legal Practitioner Interest on Trust Accounts Fund and will be allocated for statutory purposes specified in legislation, as approved by the Minister on the recommendation of the Chief Executive of the Department.
- The legal profession rule in relation to conduct matters will be made as subordinate legislation and will be enforceable in disciplinary proceedings.

New matters

The Bill moves provisions relating to the establishment of the law society to the new Act and provides for the following changes requested by the society in relation to its Council.

- the membership of its Council to be reduced to no more than 12 and no less than 7;
- the Council to meet no less than 6 times per year;
- meetings to be in the manner determined by the Council and to allow for phone and video conferencing;

- the Council to be able to delegate its functions;
- the immediate past president to be an ex officio member; and
- the extension of the term of the current Council for an extra year to facilitate a smooth transition to the new regulatory arrangements.

The *Queensland Law Society Act 1952* currently allows for:

- the appointment of a trustee of a solicitor's trust account in a number of circumstances;
- arrangements for the management of a legal practice where a practitioner dies or is incapable (because of illness) from operating a trust account; and
- the appointment of a receiver in appropriate cases.

The Bill includes corresponding external administration provisions developed as part of the national model laws. They clearly set out the respective roles and powers of a supervisor of trust accounts, a manager of the practice (with operational responsibility in respect of the legal practice) and the receiver where the practice is to be wound up. Receivers have prescribed processes (including court processes) to establish and to attach money and property to which the receivership applies. There are appropriate appeal mechanisms for persons to object to the relevant appointments.

The current provisions in the *Queensland Law Society Act 1952* relating to the fidelity fund only apply to local practising certificate holders. The Bill adopts the fidelity fund provisions from the national model laws. The national model laws project had a number of objectives in this area:

- the jurisdiction to be liable in the event of a claim in the context of interstate legal practitioners who will be permitted to practice and may operate trust accounts in this jurisdiction;
- issues relating to claims with multi-jurisdictional elements; and
- a consistent basis for the treatment of claims and excluded claims, in particular, relating to investment and mortgage financing activities.

The Bill provides for the regulatory aspects of multi-disciplinary partnerships (e.g. of accountants and lawyers) where an Australian legal practitioner is one of the partners. The provisions applying to multi-disciplinary partnerships correspond with the provisions of the *Legal Profession Act 2003*, as they apply to incorporated legal practices with the

necessary changes. These provisions have been adopted in the national model laws with drafting modifications consistent with those for incorporated legal practices. There are corresponding provisions allowing for activities to be able to be prescribed as prohibited from being carried on in association with legal practice in a multi-disciplinary partnership. There are also provisions for the application of professional standards, trust accounts and complaints and discipline to apply to multi-disciplinary partnerships.

The Bill provides for Queensland's participation in the national scheme for the registration of foreign lawyers. Under the scheme, a person must not practise foreign law (in the State or Territory) unless the person is registered as a foreign lawyer and practises foreign law in the State or Territory in accordance with the legislation. They are subject to the same professional obligations, complaints and disciplinary processes and professional indemnity insurance and trust account requirements as local legal practitioners. The scheme provides for foreign lawyers to be recognised on the basis of their registration in other jurisdictions, avoiding the need for multiple registrations.

Administrative cost to Government of implementation

The changes are to be cost neutral and funded from the Legal Practitioner Interest on Trust Accounts Fund.

Consistency with Fundamental Legislative Principles

Matters previously under the Legal Profession Act 2003, included in the Bill

Whether legislation has sufficient regard to rights and liberties of individuals

The Bill provides that incorporated legal practices must have at least one legal practitioner as a director of the corporation, called a "legal practitioner director". Each legal practitioner director is responsible for the management of the legal services provided in this jurisdiction by the incorporated legal practice. The Bill provides a number of matters where the actions of others are capable of being unsatisfactory professional conduct or professional misconduct by the legal practitioner director. These include unsatisfactory professional conduct by an Australian legal practitioner employed by the corporation, conduct of another director that

adversely affects the provision of legal services by the practice and the unsuitability of another director (Clause 93)

Although it may be argued that these provisions do not have sufficient regard to the rights of a legal practitioner director, they are considered necessary for the following reasons.

- The legal practitioner director is responsible for the management of legal services provided in the jurisdiction by the corporation. In facilitating the provision of legal services by a corporation, it is important that a legal practitioner within the corporation have clear responsibilities for the legal practice and that there be disciplinary consequences if these matters are not appropriately managed.
- The provisions are consistent with the national model laws approach to incorporated legal practices. It is an area where maximum uniformity is considered desirable in the interests of national practice.
- The conduct is only capable of constituting unsatisfactory professional conduct or professional misconduct by a legal practitioner director. This will be determined by the disciplinary body in all the circumstances should a discipline application be brought.

Similar provisions exist in other Queensland legislation where it is considered appropriate to heighten corporate governance responsibilities.

The Bill also provides that, if a corporation commits an offence against a provision of the Act, each of the executive officers of the corporation also commits an offence (clause 585). It will be a defence for the officer to prove either that the officer was not in a position to influence the corporation's conduct in relation to the offence or, if the officer was in that position, that the officer exercised reasonable diligence to ensure the corporation complied with the provision. Special provision is made for incorporated legal practices. The provisions frequently appear in principal legislation. Such provisions are considered to be warranted in association with incorporated legal practices newly being able to provide legal services and the need for accountability of executive officers of the corporations in respect of the legislative obligations on the corporations. There are appropriate defences.

Powers to enter premises, and search for or seize documents

Under chapter 7, part 2 of the the Bill, investigators would be able to enter a public place, or premises with consent or under a warrant. The Bill also provides that an investigator may enter a place if it is a place of business where an Australian legal practitioner is generally engaged in legal practice, other than a residence, and the place is open for carrying on business or otherwise open for entry. “Residence” includes a part of a place of business where a person resides. This power is considered to be justified on the basis that it is limited to the legal practitioner’s usual place of business. Legal practitioners are effectively licensed under a practising certificate scheme and as a consequence must accept that they are subject to conduct rules and complaints and disciplinary processes. A complaint may not always disclose the seriousness of the misconduct that may ultimately be uncovered through an investigation. Without a more general power of entry, there is concern that a practitioner may withdraw consent to entry if the investigator is getting close to discovering evidence of misconduct or an offence, which evidence may be destroyed before a warrant can be obtained.

Retrospective operation

When an individual applies for admission as a legal practitioner in Queensland, the Supreme Court and the Legal Practitioners Admissions Board (“admissions board”) will consider suitability matters in relation to the person as part of considering the person’s eligibility and suitability to be admitted as a legal practitioner in Queensland. Similarly, the law society or bar association will consider an individual’s suitability (including an individual admitted in another jurisdiction) when the individual applies for the grant or renewal of a practising certificate.

Part of considering an individual’s suitability involves considering past conduct. Past acts can be relevant in one of two ways. Firstly, whether past conduct should disqualify the person from holding the position and being an officer of the court. Secondly, whether a number of past acts over a period of time may be indicative of an underlying problem including lack of respect for the law.

Accordingly, the Bill allows past actions to be considered, even actions that would otherwise be protected by the *Criminal Law (Rehabilitation of Offenders) Act 1986*. This approach manifests itself throughout the Bill. For example, in the definition of “suitability matter”, most of the matters listed look back in time by referring to “whether the individual is or has been an insolvent under administration” or “has been convicted of an offence in Australia or a foreign country”. It also provides “A matter is a

suitability matter even if it happened before the commencement of this section.”

The provisions are considered to be justified because the Supreme Court, admissions board and other bodies charged with functions under the Act, have a legitimate role in looking at a person’s conduct as a whole and ensuring that the public is protected from a person who is not suitable to hold the position of a lawyer in the community. This is important where lawyers accept money on trust for clients, sign or witness documents for clients and are expected to act in the best interests of the clients without conflict. Further, suitability matters do not prevent a person being admitted etcetera but are part of the whole consideration of a person’s application. This approach is also included as an example in the national model laws.

Immunity from proceeding or prosecution without adequate justification

Clauses 113 and 114 provide that no liability attaches to certain external administrators for acts or omissions in good faith for the purpose of carrying out or acting under the order of the Supreme Court. Clauses 216 and 377 provide that no liability attaches to various persons with regulatory responsibilities under the Act for acts or omissions in good faith. All are based on the national model laws, are limited in effect and are necessary for the administration of the Act.

Legislation unambiguous, clear and precise

Clause 75 provides for conditions applicable to an interstate legal practitioner when practising in Queensland without a local practising certificate. The legal practitioner is to comply with conditions applicable under the corresponding law of the jurisdiction from which he or she holds a practising certificate and conditions under this Act. If there is an inconsistency between those conditions, the more onerous conditions prevail to the extent of the inconsistency. Which conditions are more onerous may be unclear. The provision acknowledges the principle that interstate practitioners have no more extensive rights of practice in this jurisdiction than they do in their home jurisdiction or under the laws of this State. It is desirable that this interstate provision follow the national model laws.

Delegation of legislative power in appropriate cases to appropriate persons.

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons. The Bill provides, in relation to incorporated legal practices, for the relationship between the Act and the Corporations Act to be dealt with by regulation

and for such regulations to be Corporations Law displacement provisions. This arrangement is in accordance with the national model laws and is appropriate where legislation allowing for incorporated legal practices is untried and to allow for dealing with conflicts that might not be anticipated.

Chapter 2, Part 8, Division 2 sets up the prescribed accounts system in relation to the statutory deposit obligations relating to solicitors' trust. It contemplates regulations fleshing out the details of the system. Given the expected detail of these administrative provisions and the need to ensure that they are workable for financial institutions and solicitors affected, this power is considered to be justified.

Regulations are also to be used to give effect to other documents made or entered into by a regulatory authority such as administration rules and protocols. The device of allowing the regulatory bodies to make provisions about solicitors and barristers, but not to make binding provisions unless a regulation supports the provision, strikes a balance between scrutiny by Parliament and the need for self regulation.

Henry VIII provisions

The Bill contains a number of Henry VIII provisions and the reason for most of them is that the Bill follows the national model laws.

Clause 87 provides that a regulation may prohibit an incorporated legal practice or a related body corporate from providing a service or conducting a business of a kind stated under a regulation. The Bill would already prohibit an incorporated legal practice from conducting a managed investments scheme. The intention is that a regulation would be made in respect of an activity where it is not in the public interest for the activity to be conducted in association with legal practice because of the conflicts that may be involved. Although the regulation may be seen as not having sufficient regard to the institution of Parliament, it is considered necessary because it:

- allows an early response to activities that are identified as not being in the public interest to be conducted in association with legal practice; and
- is consistent with the national model laws in respect of incorporated legal practices being developed through SCAG in an area where maximum uniformity is considered desirable in the interests of national practice.

Under clause 86 a corporation that provides legal services is not an incorporated legal practice if the corporation is prescribed under a

regulation as a corporation that is not an incorporated legal practice. This exempting power is included to ensure that the incorporated legal practice provisions do not have an unintended consequence for a class of corporation to which it is inappropriate that it applies. The device is also used for other definitions for the same Part, specifically for defining director, officer and related body corporate, Corporations Act administrator and external administrator.

New matters in this Bill

Whether legislation has sufficient regard to rights and liberties of individuals

Under clause 92(4), if it should be reasonably apparent that the provision of legal services by the corporation will result in breaches of the professional obligations of a practitioner, a legal practitioner director must take all reasonable action available to prevent the breach or take appropriate remedial action. This is justified where the legal practitioner director is responsible for the management of the legal services provided in the jurisdiction by the corporation. In facilitating incorporated legal practices, it is important that the legal practitioner director have clear responsibilities and that there be disciplinary consequences if these matters are not appropriately managed. The provision is part of the national model laws in an area where maximum uniformity is considered desirable. Further, the conduct is only capable of constituting professional misconduct or unsatisfactory professional conduct. The matter would be decided by the disciplinary body in all the circumstances, should a discipline application be brought.

The new multi-disciplinary partnership provisions, like the incorporated legal practice provisions for legal practitioner directors, provide that the conduct of others (employees and partners) or the unsuitability of a partner is capable of being professional misconduct or unsatisfactory professional conduct by the legal practitioner partner (Clause 127). This is justified because in facilitating multi-disciplinary partnerships, it is important that the legal practitioner partner have clear responsibilities and that there be disciplinary consequences if these matters are not appropriately managed. The provision is part of the national model laws in an area where maximum uniformity is considered desirable. Further, the conduct is only capable of constituting professional misconduct or unsatisfactory professional conduct. The matter would be decided by the disciplinary body in all the circumstances, should a discipline application be brought.

Clause 182 provides that the decision of the law society to not pay an amount in excess of the prescribed cap on claims for the fidelity fund is not reviewable. The clause can be justified having regard to the finite resources of the fund. Caps on claims are needed to maximize the availability of the fund for claimants where a single large claim or groups of claims could potentially exhaust the fund. The clause is considered appropriate because, if the cap is not exceeded, the law society is already paying the maximum claim generally allowed under the legislation. To provide a right of appeal for payments not made in excess of the cap would not be workable.

Clause 183 provides that, in the event of the Fidelity Fund being insufficient to meet claims, the payment of claims can be postponed and claims partially paid. It also allows the law society to declare that for partial claims, the balance is not payable, although it can later revoke the declaration. The clause provides for the society's decision to declare to be non-reviewable. The clause can be justified having regard to the finite resources of the Fund and the foreseeable possibility of the insufficiency of the Fund due to extraordinary claims.

Clause 197 provides for the law society to consult and co-operate with corresponding authorities in other jurisdictions in respect of fidelity fund claims. While this may raise privacy issues, the circumstances where they may do so are sufficiently controlled through other provisions outlining where they may assist one another in investigating claims and provisions that relate to claims of mutual interest because of a shared liability.

Clause 337 provides in a receivership examination for the court to be able to require a person to answer a question that might incriminate the person, although the evidence (or its derivative use) may not subsequently be used in proceedings against the person. It is considered adequate that the Court controls this process and the person is subsequently protected.

Under section 58 of the *Legal Profession Act 1995* persons with relevant academic qualifications to qualify for admission based on a specified period of service in specified government offices. However, this is not consistent with the proposed new national standards for practical legal training qualifying persons for admission. The Bill provides for the transitional issues relating to this category of applicant to be dealt with under the admission rules. At some point, government employee applicants from affected offices may be placed on the same footing as other applicants and need to satisfy the practical legal training requirements through articles of clerkship or a practical legal training course. While this may affect the

current rights of these applicants, it is in the public interest that only those who are appropriately qualified should be admitted as legal practitioners. Dealing with transitional issues in the admission rules is appropriate where, whether a person is appropriate to be admitted, is generally a matter for the Court.

Clause 338 allows a receiver to disregard a lien over regulated property if a practitioner claiming the lien does not comply with specified requirements for detailing the lien and associated costs. While this may be seen as taking away the practitioner's rights, there is a need for expediency in these matters and the practitioner can protect position by complying with the notice.

Clause 340 provide that in certain proceedings by the receiver specified matters certified by a person authorised by the law society are evidence of those matters, in absence of evidence to the contrary. This approach is adopted for practicality and expedience. It is not conclusive evidence and persons would be able to lead evidence to the contrary.

Institution of Parliament - amendment of an Act only by another Act

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill authorises the amendment of an Act only by another Act. Section 406 of the *Legal Profession Act 2003* is sometimes referred to as a transitional regulation making power. The section allows regulations to be made for the purposes of the transition and those regulations and the provision itself expire after one year.

Although it may be argued that this power does not have sufficient regard to the institution of Parliament, it was considered necessary in view of the complexity of the amendments, the staged approach to the implementation of the reforms, new legislative issues raised by interstate lawyers, the need for the legislation to be consistent with the emerging national model laws and the need for provisions which have previously only applied to individuals to operate in respect of incorporated legal practices. It is in the public interest that there be no gaps in the legislative scheme that would adversely affect a lawyer's right to practise, their professional obligations, or the operation of provisions intended to protect the public, such as in respect of professional indemnity insurance cover. Similar provisions have been used in Queensland legislation when regulatory regimes are being substantially changed. The Bill provides additionally for such regulations to be made on more than one occasion. However, each would still expire on the same date, after 1 year from the commencement of the section (unless earlier revoked).

Section 406 of the *Legal Profession Act 2003* also provided for a transitional regulation for the application, with or without changes, of various provisions of the Act, the *Queensland Law Society Act 1952* and the *Trust Accounts Act 1973* for incorporated legal practices.

Clause 643 provides for a general regulation making power in these matters under the incorporated legal practice and multi-disciplinary partnership provisions, as under the national model laws. The regulation making powers is under the relevant operational areas (such as trust accounts, legal costs and fees and fidelity fund). There is a similar regulation making power for the application of relevant laws to foreign lawyers. While it might be argued that the provisions do not have sufficient regard to the institution of Parliament, the regulation making power can be justified for a number of reasons. The regulations will be made with reference to the regulatory arrangements in place under the Act. The business structures and proposed registration system for foreign lawyers are new and issues affecting their regulation can be expected to emerge over time. These are areas where maximum uniformity with the national model laws is desirable. In that event, in the context of national practice, it is important that jurisdictions can move quickly to adopt a consistent approach.

Henry VIII provisions

The Bill, which generally reserves engaging in legal practice to legal practitioners with practising certificates, provides for exemptions to be made by regulation. There are significant penalties for breach of the provision. The regulation making power is to ensure that the provision does not have any unintended consequences should a person or body engage in legal practice of a kind that are appropriate to be exempted (Clause 24). It may also be desirable to clarify that the reservation provisions do not apply to an activity where it is uncertain whether the activity constitutes engaging in legal practice. This is a part of the national model laws where maximum uniformity is desirable.

The new multi-disciplinary partnership provisions, like the incorporated legal practice provisions, prohibit a legal practitioner from being in partnership with a person providing services or conducting a business of a kind prescribed by regulation (Clause 124). As for incorporated legal practices, this can be justified as allowing for an early response to activities that are identified as not being in the public interest to be conducted in association with legal practice. It is part of the national model laws in an area where maximum uniformity is desirable.

The Bill also provides for the scope of practice of foreign lawyers to include classes of arbitration and alternative dispute resolution approved by regulation (Clause 363). This is as proposed under the national model laws and it is desirable that there be uniformity in this area, where the registration scheme will allow foreign lawyers to practise nationally on the basis of their Australian registration. Further, the regulation making power is not open-ended but is constrained to the already narrow areas of practice, being arbitration and alternative dispute resolution.

The Act exempts government legal officers engaged in government work from a number of requirements of the Act, including practising certificates and fidelity fund contributions. The relevant definition section relates to employment by a “department of this jurisdiction, commission or an agency prescribed under a regulation” and for that regulation to be able to specify those activities of the prescribed agency which are not government work (Clause 10). While it might be argued that the provision does not have sufficient regard to the institution of Parliament, this power is justified by the need to be able to respond appropriately in all the circumstances of an individual case and possible uncertainty as to what constitutes government work for an agency that is not a department.

The Act provides for the prescription of the minimum requirements for professional indemnity insurance with which a local legal practitioner and interstate legal practitioner engaged in legal practice in the jurisdiction must comply (Clauses 50 and 74). While it might be argued that the provisions do not have sufficient regard to the institution of Parliament, it is appropriate that these matters be prescribed to be flexible in relation to the insurance which may be available from year to year. It is also proposed as part of national model laws that there may be uniform national requirements and there needs to be a mechanism to respond quickly in this context

Clause 145 provides that a regulation may provide that the fidelity fund provisions do not apply to defaults by interstate practitioners. The consequential amendments to the *Trust Accounts Act 1973* (Schedule 1), in specifying the application to trustees in relation to trust moneys on a basis consistent with the national model laws, provide for regulations to specify persons and trust moneys to which the Act does not apply. There is a similar provision in relation to chapter 4. The national arrangements are new. This flexibility is necessary to ensure that the local fund does not become liable in respect of classes of defaults or interstate practitioners for which it ought not reasonably be liable and that the trust account requirements and the external intervention provisions do not apply in

circumstances where they are inappropriate or where consistency is needed as part of a national approach.

Proceedings or prosecution without adequate justification

Clauses 148 and 164 provide that no liability attaches to “protected persons” for acts in good faith in arranging fidelity insurance or making required advertisements about fidelity fund defaults. Clause 350 also protects a law practice or associate from liability for acts and omissions of the external intervener. They are based on the national model laws and are of limited effect where necessary for the administration of the Act.

CONSULTATION

Community

There has been extensive community consultation through the 1998 Discussion Paper, 1999 Green Paper, the announcement of the Government’s proposals in 2000, the release of the NCP Issues Paper in 2001 and on the Legal Profession Bill 2003. The professional bodies have been consulted on the parts that are to be added from the national model laws through the Law Council of Australia. The Queensland Law Society (law society) has been consulted aspects of the Bill relating to its continuing constitution.

Government

The Department of Premier and Cabinet and Queensland Treasury have been consulted. Departments were consulted on the consequential amendments in the Legal Profession Bill 2003 in relation to changed terminology relating to lawyers in legislation for which they have responsibility. The Ministerial Council for Corporations has been consulted on the proposed Corporations Act displacement provisions.

NOTES ON PROVISIONS

CHAPTER 1—INTRODUCTION

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act provides for the provisions of the Act to commence on dates fixed by proclamation.

Clause 2 provides for the Act to commence on a day fixed by proclamation.

Clause 3 specifies the main purposes of the Bill.

PART 2—INTERPRETATION

Division 1—Dictionary

Clause 4 provides for a dictionary in schedule 5 to define particular words used in this Act.

Division 2—Meaning of particular terms involving a legal title and related matters

Clause 5 defines terms used in the Act involving “lawyer”. There are transitional provisions for practitioners entered on the solicitors and barristers rolls before the commencement of the legal practitioners roll. For various provisions, the Act distinguishes between “lawyers” (admitted practitioners) and “legal practitioners” (those with practising certificates). In some cases, a provision may apply to an Australian lawyer or, in other

cases to an Australian legal practitioner. Other provisions need to distinguish the position for local as against interstate legal practitioners or lawyers.

Clause 6 defines terms used in the Act involving “legal practitioner”. See explanation as for clause 5.

Clause 7 provides that entities under the Act with with functions or powers in relation to Australian lawyers and Australian legal practitioners can only exercise these powers in relation to local lawyers, local or interstate legal practitioners engaged in legal practice in the jurisdiction. It is subject to other specific provisions in the Act.

Clause 8 defines the term “barrister” for local and interstate legal practitioners. For interstate legal practitioners, it covers the position in jurisdictions where there are not separate practising certificates for barristers.

Clause 9 defines the term “solicitor”. For interstate legal practitioners, it covers the position in jurisdictions where there are not separate practising certificates for solicitors.

Clause 10 defines “government legal officer”. Government legal officers are not subject to certain requirements of the Act when they engage in government work.

Clause 11 defines “principal” and other terms in relation to an “associate”.

Division 3—Meaning of other terms for this Act

Clause 12 defines “home jurisdiction” of an Australian legal practitioner, Australian-registered foreign lawyer and associate who is not Australian legal practitioner, Australian-registered foreign lawyer.

Clause 13 defines “suitability matter” which may be relevant to whether a person is fit and proper to be admitted or hold a practising certificate.

Clause 14 defines “serious offence”.

Clause 15 defines “conviction” and “quashing a conviction”.

Clause 16 defines “information notice”.

Division 4—Other matters relating to interpretation

Clause 17 provides that a note in the text of this Act is part of this Act.

Clause 18 provides for the interpretation of the time for doing things under the Act.

Clause 19 allows courts and tribunal to allow persons to appeal out of time.

Clause 20 provides in respect of grounds for specified matters under the Act to be reasonable in the circumstances.

Division 5—Other relevant matter

Clause 21 provides that, where contravention of a provision is capable of constituting unsatisfactory professional conduct or professional misconduct and a penalty applies, Chapter 3 can also apply to the matter.

**CHAPTER 2—ENGAGING IN LEGAL PRACTICE
(OTHER THAN AS AUSTRALIAN-REGISTERED
FOREIGN LAWYERS)****PART 1—PRELIMINARY**

Clause 22 provides for a simplified outline of the chapter.

**PART 2—RESERVATION OF LEGAL WORK AND
RELATED MATTERS**

Clause 23 provides that the part does not apply to a government legal officer engaged in government work and persons authorised to engage in legal practice under a Commonwealth law.

Clause 24 prohibits persons from engaging in legal practice in this jurisdiction unless they are Australian legal practitioners. There are specified exceptions.

Clause 25 imposes restrictions from representing or advertising that persons are entitled to engage in legal practice unless they are Australian legal practitioners.

Clause 26 relates to contraventions of section 20 or 21 by an Australian lawyer who is not an Australian legal practitioner.

PART 3—ADMISSION OF LEGAL PRACTITIONERS

Division 1—Preliminary

Clause 27 specifies the main purpose of the Part.

Clause 28 specifies definitions for the Part.

Division 2—Eligibility and suitability for admission as legal practitioners

Clause 29 specifies the eligibility requirements for admission. Academic qualifications and practical legal training from other jurisdictions which apply similar minimum criteria will be recognised.

Clause 30 provides that a person is suitable for admission as a legal practitioner only if the person is a fit and proper person to be admitted as a legal practitioner and for how that is to be determined.

Division 3—Application for admission

Clause 31 provides for the main purposes of division 3.

Clause 32 provides for the making of an application for admission.

Clause 33 specifies the role of the board in helping the Supreme Court in relation to applications for admission and its powers to require an applicant

to give it stated documents or information or to cooperate with inquiries by the board.

Clause 34 provides for the role of the Supreme Court relating to applications for admission.

Division 4—Early consideration of suitability

Clause 35 provides for the main purpose of the division.

Clause 36 allows an individual to apply to the board for early consideration of a matter that may adversely affect its assessment of the individual's suitability for admission as a legal practitioner and for an appeal against the decision of the board to the Court.

Clause 37 provides that the Court may give directions to the board or decide matters on appeal.

Division 5—Roll of legal practitioners

Clause 38 provides for the keeping by the Supreme Court of a roll of legal practitioners (the "local roll") and for transitional arrangements in respect of the local rolls of barristers and solicitors.

Clause 39 provides for an individual to become an officer of the Supreme Court on being admitted as a legal practitioner and for the status of those who were on the roll of solicitors or roll of barristers immediately before commencement to continue.

Division 6—Miscellaneous

Clause 40 provides in respect of conditional admission.

Clause 41 provides for the board's right of appearance at the hearing of applications under the Part.

Clause 42 provides for the board to charge fees set by regulation.

Clause 43 provides that the admission rules must not require a person complete before admission a period of supervised training longer than one year.

PART 4—LEGAL PRACTICE BY AUSTRALIAN LEGAL PRACTITIONERS

Division 1—Preliminary

Clause 44 specifies the main purposes of the Part.

Clause 45 defines “relevant regulatory authority” as the law society for solicitors and the bar association for barristers.

Clause 46 provides for how suitability to hold or continue to hold a practising certificate is to be decided under the Part.

Division 2—Legal practice in this jurisdiction

Clause 47 entitles an Australian legal practitioner, subject to this Act, to engage in legal practice in this jurisdiction. It excepts government legal officers engaged in government work but does not prevent government legal officers from holding practising certificates.

Division 3—Matters relating to applications for grant or renewal of local practising certificates

Clause 48 provides for applications for the grant or renewal of a local practising certificate. The provision specifies when an Australian lawyer is eligible to, or is required to, apply for the grant or renewal of a local practising certificate. Subject to the specified exceptions, an Australian legal practitioner who engages in legal practice principally in this jurisdiction during a financial year and intends to engage in legal practice in the following financial year must apply for the grant or renewal of a local practising certificate for the following financial year.

Clause 49 provides for the manner of application for a local practising certificate.

Clause 50 provides for the professional indemnity insurance requirements for a local practising certificate and exempts government legal officers in relation to government work and legal practitioners providing in-house legal services from the requirement.

Clause 51 provides for the continuing obligation on a practitioner relating to professional indemnity insurance cover.

Division 4—Grant or renewal of local practising certificate

Clause 52 applies in relation to the grant or renewal of a local practising certificate.

Clause 53 provides for the conditions that may be imposed by the law society or bar association on local practising certificates.

Clause 54 specifies the process where a regulatory authority imposes a condition on a practising certificate.

Clause 55 provides for the duration of local practising certificates based on a financial year.

Clause 56 provides that an individual who is not already an officer of the Supreme Court, becomes an officer of the court on being granted a local practising certificate.

Division 5—Conditions applying to local practising certificates

Clause 57 provides for the conditions to which a local practising certificate is or may be subject.

Clause 58 provides that it is a statutory condition of a local practising certificate that the holder give notification if the holder commits an offence which would need to be disclosed under the admission rules.

Clause 59 provides in respect of a statutory condition of a local practising certificate in relation to the required minimum period for supervised practice for solicitors.

Clause 60 provides that a local practicing certificate is subject to a condition imposed on admission and still in force.

Clause 61 makes contravention of a condition capable of being unsatisfactory professional conduct or professional misconduct.

Division 6—Special powers relating to local practising certificates

Clause 62 applies in relation to the application for a local practising certificate if a show cause event (relating to insolvency, taxation offence or serious offence) has occurred after first admission.

Clause 63 specifies the action to be taken by a local legal practitioner if a show cause event happens to that practitioner.

Clause 64 specifies the powers of refusal, cancellation or suspension of a local practising certificate by the relevant regulatory authority in the event of failure to show cause.

Clause 65 provides that a regulatory authority can decide that a person is not to apply for a practising certificate for a specified period up to 5 years, for an appeal from such decision and for recognition of similar decision under a corresponding authority.

Division 7—Amendment, cancellation or suspension of local practising certificates

Clause 66 relates to the application of the division.

Clause 67 provides the grounds for amending, cancelling or suspending a person's local practising certificate including if the certificate holder is no longer fit and proper to hold the certificate.

Clause 68 specifies the show cause process to be adopted if the relevant regulatory authority believes a ground exists to amend, cancel or suspend an individual's local practising certificate.

Division 8—Provisions that apply to other actions including actions under div 6 or 7

Clause 69 provides for the consensual cancellation or amendment of a local practising certificate.

Clause 70 provides for the cancellation of a local practising certificate if a person is removed from the local roll.

Clause 71 relates to the date of effect of an amendment, suspension, cancellation or where the matter relates to the conviction of an offence for

the Court to order a stay until an appeal is decided or the appeal period ends.

Clause 72 relates to the return of a local legal practitioner's practising certificate that is amended, cancelled or suspended by the relevant regulatory authority or is replaced by another certificate.

Clause 73 provides for the investigation of matters under division 6 or 7 and for nothing in this division to prevent a regulatory authority from making a complaint about a matter to which this division relates or the commissioner investigating or referring a matter for investigation.

Division 9—Interstate legal practitioners

Clause 74 specifies the professional indemnity insurance requirements for interstate legal practitioners.

Clause 75 specifies the extent of entitlement of an interstate legal practitioner to practise in this jurisdiction.

Clause 76 provides for the relevant regulatory authority to impose conditions on interstate legal practitioners engaging in legal practice in this jurisdiction.

Clause 77 provides for the same requirements in respect of unsupervised practice for interstate legal practitioners as for local legal practitioners.

Clause 78 provides that an interstate legal practitioner has all the duties and obligations of an officer of the Supreme Court, and in that respect is subject to the jurisdiction of the Supreme Court.

Division 10—Miscellaneous provisions about local practising certificates and other matters

Clause 79 enables the relevant regulatory authority, where it considers it necessary in the public interest, to immediately suspend a local practising certificate or operation of trust accounts.

Clause 80 provides for regulatory authorities to enter into protocols with regulatory authorities of other jurisdictions about deciding certain matters and for a protocol to have effect in this jurisdiction only to the extent it is approved under a regulation.

Clause 81 provides for the regulatory authority to obtain information etc to help it consider whether or not to grant, renew, cancel or suspend a local practising certificate, or impose conditions on a local practising certificate.

Clause 82 provides that a regulatory authority must keep a register of local practising certificates.

Clause 83 provides for the fees that may be charged by a regulatory authority.

PART 5—LEGAL PRACTICE BY INCORPORATED LEGAL PRACTICES

Division 1—Preliminary

Clause 84 specifies the main purpose of the Part.

Clause 85 provides for when a corporation is or is not an “incorporated legal practice”.

Clause 86 contains definitions for the Part.

Division 2—Incorporated legal practices providing legal services

Clause 87 relates to the non-legal services an incorporated legal practice may provide or that an incorporated legal practice or related body corporate may not provide.

Clause 88 provides for corporations that are eligible to be incorporated legal practices.

Clause 89 provides that, before starting to engage in legal practice in this jurisdiction, a corporation must give the law society written notice of its intention to do so.

Clause 90 creates an offence about advertising or representing that a corporation is an incorporated legal practice unless a relevant notice has been given.

Clause 91 provides for notice to be given when a corporation stops engaging in legal practice in this jurisdiction.

Division 3—Legal practitioner directors, and other legal practitioners employed by incorporated legal practices

Clause 92 requires an incorporated legal practice to have a legal practitioner director and specifies the responsibilities of a legal practitioner director.

Clause 93 specifies the obligations of a legal practitioner director relating to conduct of others in relation to the incorporated legal practice.

Clause 94 provides that an incorporated legal practice cannot be without a legal practitioner director for more than 7 days and for the required notice to the law society and for action that may be taken by the law society in that event.

Clause 95 preserves the obligations and privileges of an Australian legal practitioner who is an officer or employee of an incorporated legal practice.

Division 4—Particular matters including application of other provisions of a relevant law

Clause 96 provides for the provisions of this Act relating to insurance to apply with any necessary changes to incorporated legal practices in relation to the provision of legal services in the same way that they apply to Australian legal practitioners.

Clause 97 relates to matters pertaining to conflicts of interest, in respect of the interests of the incorporated legal practice or related body corporate.

Clause 98 provides for the disclosure obligations that apply when a person engages an incorporated legal practice to provide services that the person might reasonably assume to be legal services (unless the practice provides only legal services in this jurisdiction).

Clause 99 provides for the effect of non-disclosure under section 98.

Clause 100 provides for the application of a legal profession rule to Australian legal practitioners who are officers or employees of incorporated legal practices.

Clause 101 provides for restrictions on advertising by Australian legal practitioners to apply to advertising by an incorporated legal practice in relation to the provision of legal services and for an advertisement by incorporated legal practices for the purposes of disciplinary proceedings to be taken to have been authorised by each legal practitioner director.

Clause 102 provides for requirements relating to trust money or trust accounts that apply to an incorporated legal practice.

Clause 103 provides for requirements relating to client agreements under the *Queensland Law Society Act 1952* to apply to incorporated legal practices.

Clause 104 provides for the extension of vicarious liability relating to failure to account and dishonesty to incorporated legal practices.

Clause 105 provides that nothing under this Act prevents an Australian legal practitioner from sharing with an incorporated legal practice receipts arising from the provision of legal services by the practitioner.

Clause 106 prohibits an incorporated legal practice from specified kinds of involvement with a disqualified person.

Division 5—Ensuring compliance with this Act by incorporated legal practices

Clause 107 provides for the audit of incorporated legal practice by an ILP authority (ie, the commissioner or the law society).

Clause 108 provides for an ILP authority, on specified grounds, to apply to the Supreme Court for an order disqualifying a corporation from providing legal services in this jurisdiction.

Clause 109 provides for an ILP authority, on specified grounds, to apply to the Supreme Court for an order disqualifying a person from managing an incorporated legal practice.

Clause 110 provides that an ILP authority may disclose information to the Australian Securities and Investments Commission.

Division 6—External administration

Clause 111 provides for an ILP authority to intervene in external administration proceedings under the *Corporations Act 2001 (Cth)* and for the court, when exercising its jurisdiction in the proceedings, to have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the practice.

Clause 112 provides, as for section 112, in respect of external administration proceedings under other legislation.

Clause 113 provides for the Court to resolve issues where an incorporated legal practice is subject to receivership under this Act and external administration under *Corporations Act 2001 (Cth)*.

Clause 114 provides for the Court to resolve issues where an incorporated legal practice is subject to receivership under this Act and external administration under another Act.

Division 7—Miscellaneous

Clause 115 provides for Courts to make arrangements for communicating and cooperating with other courts or tribunals in connection with the exercise of powers under this Part.

Clause 116 provides that a provision of a relevant law prevails to the extent of any inconsistency with a corporation's constitution .

Clause 117 for corporations not under the Corporations Act, provides that a provision of a this Act prevails to the extent of any inconsistency with the law under which they are established or regulated as prescribed by regulation.

Clause 118 provides for the making of a regulation to provide for a provision of the Part to be a Corporations legislation displacement provision for the purposes of the *Corporations Act 2001(Cth)*, section 5G.

Clause 119 makes it an offence for a person to cause or induce a legal practitioner director, or any other Australian legal practitioner who provides legal services or an incorporated legal practice, to contravene this Act or his or her professional obligations as an Australian legal practitioner.

Clause 120 provides that nothing affects the obligations of an Australian legal practitioner under this Act or as an Australian legal practitioner.

Clause 121 provides that a regulation may provide for a training requirement for legal practitioner director.

PART 6—LEGAL PRACTICE BY MULTI-DISCIPLINARY PARTNERSHIPS

Division 1—Preliminary

Clause 122 specifies the main purpose of the Part.

Clause 123 provides for when a partnership is or is not a “multi-disciplinary partnership”.

Division 2—Multi-disciplinary partnerships providing legal services

Clause 124 relates to the non-legal services a multi-disciplinary partnership (that provides legal services) may or may not provide.

Clause 125 provides that a legal practitioner partner of a multi-disciplinary partnership must, before a multi-disciplinary partnership starts to engage in legal practice in this jurisdiction, give the law society written notice of its intention to do so.

Division 3—Legal practitioner partners, and other legal practitioners employed by multi-disciplinary partnerships

Clause 126 provides that a legal practitioner partner of a multi-disciplinary partnership is responsible for the management of legal services provided by a multi-disciplinary partnership.

Clause 127 specifies the obligations of a legal practitioner partner relating to conduct of others in relation to a multi-disciplinary partnership.

Clause 128 provides that a partner does not contravene a provision of the Act merely because of specified circumstances.

Clause 129 preserves the obligations and privileges of an Australian legal practitioner who is a partner or employee of a multi-disciplinary partnership.

Clause 130 relates to matters pertaining to conflicts of interest, in respect of the interests in multi-disciplinary partnership.

Clause 131 provides for the disclosure obligations that apply when a person engages a multi-disciplinary partnership to provide services that the person might reasonably assume to be legal services (unless the practice provides only legal services in this jurisdiction).

Clause 132 provides for the effect of non-disclosure.

Clause 133 provides for the application of a legal profession rule to Australian legal practitioners who are employees of multi-disciplinary partnerships.

Clause 134 provides for restrictions on advertising by multi-disciplinary partnerships in relation to the provision of legal services.

Clause 135 provides for requirements relating to trust accounts that apply to a multi-disciplinary partnership.

Clause 136 provides for requirements relating to client agreements under the *Queensland Law Society Act 1952* to apply to multi-disciplinary partnerships.

Clause 137 provides that nothing under this Act prevents a legal practitioner partner or others from sharing with a partner who is not an Australian legal practitioner, receipts arising from the provision of legal services.

Clause 138 prohibits a Australian legal practitioner from specified kinds of involvement with a disqualified person.

Clause 139 provides for the Court to make order in respect of persons who Australian legal practitioners should not have as partners.

Clause 140 makes it an offence for a person to cause or induce a legal practitioner partner or employee of a multi-disciplinary partnership to contravene this Act or his or her professional obligations as an Australian legal practitioner.

Clause 141 provides that nothing affects the obligations of a legal practitioner partner or Australian legal practitioner who is an employee of a multi-disciplinary partnership under this Act.

Clause 142 provides that a regulation may provide in respect of services that a multi-disciplinary partnership may provide and the other services that it can provide where conflicts of interest may arise in relation to those services.

PART 7—FIDELITY COVER

Division 1—Preliminary

Clause 143 provides for the purpose of the Part.

Clause 144 provides for definitions for the Part.

Clause 145 provides for the part to not apply to barristers with local practising certificates and defaults of interstate legal practitioners prescribed by regulation.

Clause 146 provides for the time when a default occurs.

Division 2—Fidelity Fund

Clause 147 provides for the continuation of the Legal Practitioners' Fidelity Guarantee Fund.

Clause 148 allows the Queensland Law Society to make arrangements for insurance of the Fund.

Clause 149 limits the power of the society to borrow for the purposes of the Fund.

Clause 150 provides for the Fund to be kept in a separate account.

Clause 151 provides for moneys payable to the Fund.

Clause 152 provides for authorised expenditure from the Fund.

Clause 153 provides for the audit of the Fund.

Clause 154 provides for the law society to delegate its powers in relation to the Fund to a committee of management.

Clause 155 provides that the Minister may require a report on the Fund.

Clause 156 provides for contributions to be made to the Fund.

Clause 157 provides for levies to be made for the purposes of the Fund.

Clause 158 provides for the law society to advance money from its general funds for the purposes of the Fund.

Division 3—Defaults to which this Part applies

Clause 159 provides for the meaning of relevant jurisdiction for a default for the purposes of the Part.

Clause 160 defines defaults to which the Part applies.

Clause 161 excludes from the Part (and therefore claims) under the Part certain financial services and investments.

Division 4—Claims about defaults

Clause 162 provides for claims to be made on the fund.

Clause 163 provides for the time for making claims.

Clause 164 provides for advertisements to be made about defaults.

Clause 165 provides for the time limit for making claims following an advertisement.

Clause 166 provides that claims are not affected by a later change in the status of the practice or associate.

Clause 167 provides for the investigation of claims against the fund in the same way as the investigation of complaints.

Division 5—Deciding claims

Clause 168 provides for the law society to decide a claim.

Clause 169 provides for the amount payable by the fund not to exceed the amount of the pecuniary loss.

Clause 170 provides for reasonable costs to also be payable.

Clause 171 provides for reasonable interest to also be payable.

Clause 172 provides for a reduction of claim because of other benefits.

Clause 173 provides for the law society to be subrogated to the rights and remedies of the claimant.

Clause 174 provides in respect of proceedings brought under the right of subrogation.

Clause 175 provides for the repayment of surplus moneys by the claimant.

Clause 176 provides for the law society to notify a delay in deciding a claim.

Clause 177 provides for the notification under clause 176 to include an information notice.

Division 6—Appeals

Clause 178 provides for an appeal or review of a decision in respect of a claim.

Clause 179 provides for an appeal against the failure of the law society to decide a claim within a year.

Clause 180 provides for proceedings on appeal.

Division 7—Payments from fidelity fund for defaults

Clause 181 provides for payments for defaults to which the Part applies.

Clause 182 provides for prescribed caps on claims for individual claims and for the aggregate claims for an individual.

Clause 183 provides for what the law society may do in the event the fund is not sufficient. This includes postponing payments, imposing levies and making partial payments .

Division 8—Claims by law practices or associates

Clause 184 provides in relation to claims by law practices or associates for defaults.

Clause 185 provides for claims remedied avoided or reduced by a financial contribution by a law practice or associate.

Division 9—Defaults involving interstate elements

Clause 186 provides for the treatment of concerted interstate defaults.

Clause 187 provides in relation to defaults with interstate elements by one associate only.

Division 10—Inter-jurisdictional provisions

Clause 188 provides for the law society to enter into protocols with corresponding authorities in relation to matters under the Part.

Clause 189 provides for the forwarding of claims to corresponding authorities and in respect of those forwarded by corresponding authorities.

Clause 190 allows the law society to request a corresponding authority to act as agent for processing or investigating a claim.

Clause 191 provides for the law society to act as agent for a corresponding authority for processing or investigating a claim.

Clause 192 provides as for clauses 190 and 191 to apply in respect of a concerted interstate default.

Clause 193 provides for the law society to make a recommendation in relation to a claim under a corresponding law.

Clause 194 the law society can receive but does not have to accept the recommendations of a corresponding authority about a claim.

Clause 195 provides that the law society can request a corresponding authority to investigate an aspect of a claim.

Clause 196 provides for the the law society to investigate aspects of a claim at the request of a corresponding authority.

Clause 197 provides for the the law society to consult and co-operate with a corresponding authority.

Division 11—Miscellaneous

Clause 198 provides for an interstate practitioner who becomes authorised to operate a local trust account to notify the law society and be liable for contributions and levies in the same way as a local legal practitioner.

Clause 199 provides for the application of the part to incorporated legal practices.

Clause 200 provides for the application of the part to multi-disciplinary partnerships.

Clause 201 provides for the application of the part to Australian lawyers whose practising certificates have lapsed.

PART 8—FINANCIAL ARRANGEMENTS FOR THOSE WHO MAY ENGAGE IN LEGAL PRACTICE IN THIS JURISDICTION

Division 1—Preliminary

Clause 202 provides for the main purposes of the Part.

Clause 203 provides for definitions for the Part.

Clause 204 specifies the relationship with the *Trust Accounts Act 1973*.

Division 2—Prescribed accounts

Clause 205 provides that a regulation may prescribe for matters relating to a prescribed account.

Clause 206 provides that no action at law or in equity may lie against any solicitor relating to a matter or thing done by the solicitor for complying with a regulation as mentioned in section 205 that applied to the solicitor.

Division 3—Interest on trust accounts paid to department

Clause 207 provides for the chief executive to enter into arrangements with financial institutions about the financial institution paying interest to the department on prescribed accounts and trust accounts kept by solicitors.

Division 4—Legal Practitioner Interest on Trust Accounts Fund

Clause 208 establishes the Legal Practitioner Interest on Trust Accounts Fund, provides for amounts that are received for the fund and that those amounts are not received or held for the State.

Clause 209 provides for the purposes for which payments can be made from the Fund.

Clause 210 provides for the Minister to decide distribution payments under section 127 and for the chief executive to make recommendations to the Minister.

Clause 211 provides for the submission of budgets by a potential beneficiary.

**PART 9—RULES ABOUT THOSE WHO MAY ENGAGE
IN LEGAL PRACTICE IN THIS JURISDICTION**

Division 1—Preliminary

Clause 212 provides for the main purposes of the part.

Clause 213 provides that the power to make a legal profession rule or an administration rule is not limited to matters for which this Act specifically authorises the making of a legal profession rule or an administrative rule.

Clause 214 provides the definitions for the part.

Division 2—Legal profession rules

Clause 215 provides for the legal profession rules to be made by Governor in Council.

Clause 216 relates to the individuals to whom a legal profession rule may be expressed to apply.

Clause 217 authorises certain matters that may be provided under a barristers rule.

Clause 218 provides that a solicitors rule or barristers rule may apply to government legal officers.

Clause 219 imposes a limit on the matters that can be provided for in rules in respect of incorporated legal practices in so far as they relate to non-legal services.

Clause 220 provides for the law society and bar association to make recommendations to the Minister about legal profession rules.

Clause 221 provides for the committee to make recommendations to the Minister about a legal profession rule.

Clause 222 provides for public notice by a regulatory authority that proposes to make a recommendation about a legal profession rule.

Clause 223 provides for the legal profession rule to be binding on those to whom they apply.

Clause 224 provides that a regulation may be made in relation to any matter for which a legal profession rule may be made and that a provision of a legal profession rule does not have effect to the extent that it is inconsistent with this Act or a regulation.

Clause 225 provides for the relationship between a legal profession rule and an administration rule.

Division 3—Administration rules

Clause 226 provides for regulatory authorities to make administration rules.

Clause 227 provides for the rules in relation to professional indemnity cover.

Clause 228 provides that an administration rule does not have effect to the extent that it is inconsistent with this Act, a regulation or a legal profession rule relevant to the authority.

Clause 229 requires a regulatory authority to make its administration rule publicly available.

**PART 10—INTER-JURISDICTIONAL PROVISIONS
REGARDING ADMISSION AND PRACTISING
CERTIFICATES*****Division 1—Preliminary***

Clause 230 provides for the main purpose of the Part.

Clause 231 provides that this Part does not affect a function or power under chapter 3.

Division 2—Notifications to be given to interstate authorities

Clause 232 provides for notification by the board to a corresponding authority relating to an application for admission.

Clause 233 provides for notification to other jurisdictions about removal from the local roll.

Clause 234 provides for the regulatory authority to provide notice of various actions to corresponding authorities.

Division 3—Notifications to be given by lawyers to local authorities

Clause 235 provides for local lawyers and local legal practitioners to give notice of removal from an interstate roll.

Clause 236 provides for local lawyers and local legal practitioners to give notice of removal from a foreign country roll.

Clause 237 provides for the notice requirements.

Division 4—Taking of action by local authorities in response to notifications received

Clause 238 provides for peremptory removal of local lawyer's name from the local roll following removal in another jurisdiction.

Clause 239 provides for peremptory cancellation of local practising certificate following removal of name from an interstate roll.

Clause 240 provides for an Australian lawyer to apply for a "prevention order" where he or she reasonably expects that the practitioner's name will be removed from an interstate roll.

Clause 241 provides for the show cause procedure for removal of the lawyer's name from the local roll following removal in foreign country.

Clause 242 provides that a local authority may give information to another local authority.

CHAPTER 3—COMPLAINTS, INVESTIGATION MATTERS AND DISCIPLINE

PART 1—PRELIMINARY

Division 1—Preliminary

Clause 243 provides for the main purposes of this chapter.

Division 2—Key concepts

Clause 244 provides for the meaning of “unsatisfactory professional conduct”.

Clause 245 provides for the meaning of “professional misconduct”.

Clause 246 provides for conduct capable of being unsatisfactory professional conduct or professional misconduct.

Clause 247 defines the meaning of “respondent”.

Division 3—Application of this chapter

Clause 248 provides for the application of the chapter to lawyers, former lawyers and former practitioners.

Clause 249 provides for Australian legal practitioners to whom this chapter applies

Clause 250 provides for conduct in this jurisdiction of an Australian legal practitioner to which the chapter applies.

Clause 251 applies to the conduct of a local legal practitioner to which the chapter applies.

Clause 252 applies in respect of the employees of a law firm.

Division 4—Commissioner’s obligations for complaints

Clause 253 provides for the duties of the commissioner to deal with complaints.

Clause 254 provides for the duties of the commissioner to keep complainants informed.

PART 2—MAKING COMPLAINTS

Clause 255 provides for the conduct about which a complaint can be made under the chapter.

Clause 256 provides for the making of a complaint against an Australian lawyer or law practice employee.

Clause 257 provides for the commissioner to require the complainant to provide further information or verify the complaint.

Clause 258 provides for complaints made over 3 years after the conduct concerned.

Clause 259 provides for the summary dismissal of complaints.

Clause 260 provides for the withdrawal of complaints by the commissioner.

Clause 261 provides for the commissioner to delay dealing with a complaint for specified reasons.

**PART 3—MEDIATION FOR COMPLAINTS INVOLVING
CONSUMER DISPUTE**

Clause 262 provides for the definitions for the Part.

Clause 263 provides for mediation of complaints which only involve conduct disputes.

Clause 264 provides for the mediation of complaints that involve conduct disputes and an issue of unsatisfactory professional conduct or professional misconduct.

PART 4—STARTING INVESTIGATIONS BASED ON COMPLAINT OR WITHOUT A COMPLAINT

Clause 265 provides for a referral of a complaint or the investigation matter to the law society or bar association for a report.

Clause 266 provides for the commissioner to investigate a complaint or investigation matter.

Clause 267 provides for an Australian lawyer to be notified of a complaint or investigation matter.

Clause 268 provides for the role of law society or bar association in investigating complaints.

Clause 269 provides for an investigating entity to be able to require an Australian lawyer to give an explanation of a matter being investigated, appear before it and produce documents.

Clause 270 provides for submissions to be made by Australian lawyers.

Clause 271 provides that, for investigating a complaint, an investigating entity may refer a matter for a cost assessment.

Clause 272 provides for a regulation covering the cost of a costs assessment under clauses 268 and 270.

PART 5—DISCIPLINE

Division 1—Decision of commissioner

Clause 273 provides for the commissioner to make a decision after or during an investigation.

Clause 274 enables the commissioner to dismiss a complaint.

Clause 275 provides for the keeping of a record by the commissioner of a decision about a complaint or investigation matter.

Division 2—Proceedings in disciplinary body

Clause 276 provides for the commissioner to start a disciplinary proceeding.

Clause 277 provides for a disciplinary body to hear proceedings.

Clause 278 provides for variations to disciplinary proceedings.

Clause 279 provides for joinder of disciplinary proceedings.

Division 3—Decisions of disciplinary bodies

Clause 280 provides for orders by the tribunal after the tribunal has completed a hearing of a discipline application in relation to a complaint or an investigation matter if the tribunal is satisfied that the Australian lawyer is guilty of unsatisfactory professional conduct or professional misconduct.

Clause 281 provides for the filing of decisions of the tribunal about discipline applications.

Clause 282 provides for the filing of decisions of the committee about discipline applications.

Clause 283 provides for the filing of committee decisions.

Clause 284 provides for interlocutory and interim orders.

Clause 285 provides for entities to comply with orders of the disciplinary body.

Clause 286 provides for costs orders.

Clause 287 provides that the part does not affect other remedies.

PART 6—COMPENSATION ORDERS

Division 1—Preliminary

Clause 288 provides for the meaning of “compensation order”.

Division 2—Compensation orders

Clause 289 provides for limits on compensation orders relating to pecuniary loss.

Clause 290 provides for the effect of a compensation order.

Clause 291 provides that other remedies are not affected by the recovery of an amount awarded by a compensation order.

PART 7—APPEALS FROM DECISIONS OF DISCIPLINARY BODIES

Clause 292 provides for an appeal from a decision of the tribunal to the Court of Appeal by a party or the Minister.

Clause 293 provides for an appeal from a decision of the committee to the tribunal.

Clause 294 applies in relation to a decision of the Court of Appeal in relation to a decision of committee.

PART 8—PUBLICATION OF DISCIPLINARY ACTIONS

Clause 295 provides for the definitions for the part.

Clause 296 provides for the commissioner to keep a “discipline register”.

Clause 297 provides that the commissioner may publicise disciplinary action taken against an individual in any way the commissioner considers appropriate.

Clause 298 provides for disciplinary action taken because of infirmity, injury or illness not to be recorded without consent.

Clause 299 provides for removal from the register on the quashing of a decision on a disciplinary action.

Clause 300 provides that no liability is incurred by a protected person in relation to anything done or omitted to be done in good faith for certain purposes.

Clause 301 provides in respect of an order of a tribunal about the required disclosure of information.

PART 9—INTER-JURISDICTIONAL PROVISIONS

Clause 302 provides that the commissioner may enter into arrangements (“protocols”) with corresponding authorities about investigating and dealing with conduct that appears to have happened in more than one jurisdiction and the matters that the protocols may provide for.

Clause 303 provides that the commissioner may request another jurisdiction to investigate a complaint.

Clause 304 provides for a request by another jurisdiction to investigate a complaint.

Clause 305 provides for the sharing of relevant information with corresponding authorities.

Clause 306 provides for the commissioner to consult and co-operate with corresponding authorities.

Clause 307 provides for compliance with certain orders made under corresponding laws.

Clause 308 provides that other functions and powers of a person or body apart from this Part are not affected.

PART 10—MISCELLANEOUS

Clause 309 provides that the commissioner must produce information about the making of complaints and the procedure for dealing with complaints, ensure that information is available to members of the public on request and give help to members of the public in making complaints.

Clause 310 allows the commissioner to develop performance criteria.

Clause 311 provides for reports to the Minister.

Clause 312 provides for the affect of requirements under this chapter or chapter 5, part 2 on confidentiality of client communications.

Clause 313 provides that a complainant is taken to have waived legal professional privilege and benefit of duty of confidentiality to enable the practitioner to disclose to the appropriate authorities any information necessary for the investigating and dealing with the complaint.

CHAPTER 4—EXTERNAL INTERVENTION

PART 1—PRELIMINARY

Clause 314 provides for the main purposes of the chapter.

Clause 315 provides for the definitions for the chapter.

Clause 316 provides for the non-application of the chapter to local legal practitioners who are barristers; a regulation to provide whether or not and to what extent the chapter applies to interstate legal practitioners; and the application of the chapter to Australian-registered foreign lawyers.

Clause 317 provides for the application of the chapter to other persons.

PART 2—STARTING EXTERNAL INTERVENTION

Clause 318 provides for circumstances warranting external intervention.

Clause 319 provides for the circumstances where the law society can make a decision appointing an external intervener.

PART 3—SUPERVISORS

Clause 320 provides for the appointment of a supervisor of trust accounts.

Clause 321 provides for notice of the appointment to be given to specified persons.

Clause 322 provides for the effect of the service of that notice including for financial institutions with which any trust account of the practice is kept.

Clause 323 provides for the role of the supervisor.

Clause 324 provides for the supervisor to keep records of the supervisor's dealings with the trust money.

Clause 325 provides for the termination of the supervisor's appointment.

PART 4—MANAGERS

Clause 326 provides for the appointment of a manager for a law practice.

Clause 327 provides for notice of the appointment to be given to specified persons.

Clause 328 provides for the effect of the service of that notice including for financial institutions with which any trust account of the practice is kept.

Clause 329 provides for the role of the manager.

Clause 330 provides for the manager to keep records of the manager's dealings with the trust money.

Clause 331 provides for the manager to co-operate with the legal personal representative of a deceased legal practitioner associate.

Clause 332 provides for the termination of the manager's appointment.

PART 5—RECEIVERS

Clause 333 provides for the appointment of a receiver for a law practice.

Clause 334 provides for notice of the appointment to be given to specified persons.

Clause 335 provides for the effect of the service of that notice including for financial institutions with which any trust account of the practice is kept.

Clause 336 provides for the role of the receiver.

Clause 337 provides for the receiver to keep records of the receiver's dealings with the trust money.

Clause 338 provides for the receiver to take possession of regulated property.

Clause 339 provides for the power of the receiver to take delivery of regulated property.

Clause 340 provides for the power of the receiver to deal in regulated property.

Clause 341 provides for the powers of the receiver to require documents and information.

Clause 342 provides for the power of the court to order the examination of person.

Clause 343 provides for how a receiver may deal with a practitioner's lien.

Clause 344 provides that regulated property for which a receiver has been appointed is not liable to be attached under any court or other process.

Clause 345 provides for the recovery of regulated property where there has been a breach of trust.

Clause 346 provides for an offence for improperly destroying regulated property.

Clause 347 provides for the receiver to co-operate with the legal personal representative of a deceased legal practitioner associate.

Clause 348 provides for the termination of a receiver's appointment.

PART 6—GENERAL

Clause 349 provides for conditions on the appointment of an external intervener for a law practice.

Clause 350 provides for the status of acts of an external intervener for a law practice.

Clause 351 provides that a person appointed is eligible for re-appointment.

Clause 352 provides for appeals against appointments.

Clause 353 provides for the Supreme Court to make directions in relation to an external intervention.

Clause 354 provides for financial institutions to disclose information and permit access to accounts.

Clause 355 provides in relation to the fees, legal costs and expenses of an external intervener.

Clause 356 provides for reports by an external intervener for a law practice.

Clause 357 provides for confidentiality for an external intervener for a law practice.

CHAPTER 5—LEGAL PRACTICE BY FOREIGN LAWYERS

PART 1—PRELIMINARY

Clause 358 provides for the purpose of the Chapter.

Clause 359 provides for the definitions for the Chapter.

Clause 360 provides that the Chapter does not apply to Australian legal practitioners and government legal officers engaged in government work.

PART 2—PRACTICE OF FOREIGN LAW

Clause 361 prohibits a person from practising foreign law unless they are an Australian registered foreign lawyer or an Australian legal practitioner.

Clause 362 provides that an Australian-registered foreign lawyer can practice foreign law in this jurisdiction.

Clause 363 specifies the scope of practice for a foreign lawyer.

Clause 364 specifies the permitted forms of practice for an Australian-registered foreign lawyer.

Clause 365 provides that Australian professional ethical and practice standards apply to Australian-registered foreign lawyers in this jurisdiction.

Clause 366 provides for the designations that an Australian-registered foreign lawyer can use in this jurisdiction.

Clause 367 provides for status as foreign lawyer to be indicated in certain documents.

Clause 368 provides in respect of advertising by Australian-registered foreign lawyers.

Clause 369 provides in respect of the employment of Australian legal practitioners by foreign lawyers.

Clause 370 provides for Australian-registered foreign lawyers to be subject to the same trust account requirements and for a regulation to be made in the matter.

Clause 371 provides for Australian-registered foreign lawyers to be subject to prescribed professional indemnity requirements.

Clause 372 provides for Australian-registered foreign lawyers to be subject to prescribed fidelity cover requirements.

PART 3—LOCAL REGISTRATION OF FOREIGN LAWYERS GENERALLY

Clause 373 provides for overseas-registered foreign lawyers to be registered as foreign lawyers under this Act .

Clause 374 provides for registration to be for a financial year.

Clause 375 provides that a locally registered foreign lawyer is not an officer of the Supreme Court.

PART 4—APPLICATION FOR GRANT OR RENEWAL OF LOCAL REGISTRATION

Clause 376 provides for the application for the grant or renewal of registration.

Clause 377 provides for the manner of application.

Clause 378 provides for the requirements for applications for the grant or renewal of registration.

PART 5—GRANT OR RENEWAL OF LOCAL REGISTRATION

Clause 379 provides for consideration of an application by the law society.

Clause 380 provides that the law society must grant or renew if the criteria for registration is satisfied.

Clause 381 provides for when the law society may refuse an application.

PART 6—AMENDMENT, CANCELLATION OR SUSPENSION OF LOCAL REGISTRATION

Clause 382 provides for the application of the Part.

Clause 383 provides for the grounds for amending, cancelling or suspending registration.

Clause 384 provides for a show cause process for amending, cancelling or suspending registration.

Clause 385 provides for how amendment, cancellation or suspension of registration is to operate.

Clause 386 provides for other ways of amending, cancelling or suspending registration.

Clause 387 provides that nothing in the part prevents the law society from making a complaint under chapter 3.

PART 7—SPECIAL POWERS IN RELATION TO LOCAL REGISTRATION

Clause 388 provides for disclosure by an applicant for registration of show cause event happening since first registration as an overseas-registered foreign lawyer.

Clause 389 provides for disclosure of show cause event by locally registered foreign lawyer.

Clause 390 provides for refusal, cancellation or suspension of local registration for failure to show cause.

Clause 391 provides for a restriction to be imposed on making further applications.

Clause 392 provides for the relationship of this part with Chapter 3.

PART 8—FURTHER PROVISIONS RELATING TO LOCAL REGISTRATION

Clause 393 provides for registration to be able to be immediately suspended.

Clause 394 provides that a locally registered foreign lawyer may surrender his or her local registration certificate.

Clause 395 provides that the registration is cancelled if the person becomes an Australian legal practitioner.

Clause 396 provides that cancellation or suspension does not affect the disciplinary processes.

Clause 397 provides for the return of the certificate on amendment, suspension or cancellation.

PART 9—CONDITIONS OF REGISTRATION

Clause 398 provides in respect of conditions on locally registered foreign lawyers generally.

Clause 399 provides for conditions that can be imposed by the law society.

Clause 400 provides for the requirement to notify conviction of an offence or being charged with a serious offence.

Clause 401 provides for conditions that can be imposed by a regulation.

Clause 402 provides that the locally registered foreign lawyer must comply with the conditions.

PART 10—INTERSTATE-REGISTERED FOREIGN LAWYERS

Clause 403 provides for the extent of an interstate-registered foreign lawyer's right to practise in this jurisdiction.

Clause 404 provides for additional conditions on practice of interstate-registered foreign lawyers.

PART 11—MISCELLANEOUS

Clause 405 provides for the law society to ask for documents or information or make inquiries to help it consider a matter under the Chapter.

Clause 406 provides for the law society to keep a register of locally registered foreign lawyers.

Clause 407 provides for the publication of information about locally registered foreign lawyers .

Clause 408 provides for the Supreme Court to order that an Australian registered foreign lawyer shall not contravene a condition imposed under the Chapter.

Clause 409 provides for the law society to be able to exempt an Australian registered foreign lawyer (or class) from a requirement that would otherwise apply.

Clause 410 provides that Australian registered foreign lawyers are not required to join a professional association.

Clause 411 provides for a refund of fees in certain circumstances.

CHAPTER 6—ESTABLISHMENT OF ENTITIES FOR THIS ACT, AND RELATED MATTERS

PART 1—LEGAL SERVICES COMMISSIONER

Division 1—Preliminary

Clause 412 sets out the main purposes of the Part.

Division 2—Appointment

Clause 413 provides that there is to be a Legal Services Commissioner.

Clause 414 provides for the appointment of the commissioner.

Clause 415 provides for the term of the commissioner's appointment.

Clause 416 provides for the commissioner's remuneration and conditions.

Clause 417 provides for an acting commissioner to be appointed.

Clause 418 provides for when the Governor in Council can terminate the commissioner's appointment.

Clause 419 provides for resignation by the commissioner.

Division 3—Functions

Clause 420 provides for the commissioner's functions and right of appearance in proceedings.

Division 4—Legal Services Commission

Clause 421 provides for the establishment of the Legal Services Commission.

Clause 422 requires the chief executive to provide the commission with resources.

Clause 423 provides for the preservation of rights if a public service officer is appointed or engaged under the Part.

Clause 424 provides for the preservation of rights if, on appointment, the person becomes a public service officer.

Clause 425 provides for the preservation of rights if a public service officer is seconded.

Division 4—Miscellaneous matters about the commissioner

Clause 426 provides for the commissioner to delegate the commissioner's powers under this Act, other than this power of delegation.

Clause 427 provides for arrangements with a regulatory authority about copies of documents.

PART 2—DISCIPLINARY TRIBUNAL***Division 1—Preliminary***

Clause 428 provides for the main purpose of the Part.

Division 2—Establishment of Legal Practice Tribunal and related matters

Clause 429 provides for the establishment, members and chairperson of the Legal Practice Tribunal.

Clause 430 provides for the way the tribunal is to operate.

Clause 431 provides for the tribunal's jurisdiction.

Clause 432 provides for the tribunal's powers.

Clause 433 provides for the tribunal's rule-making power.

Clause 434 provides for the chairperson to make practice directions.

Clause 435 provides for the registrar of the tribunal.

Clause 436 provides for the tribunal's seal.

Division 3—Panels, members of panels and related matters

Clause 437 provides for the establishment of a lay panel and a practitioner panel to help the tribunal.

Clause 438 provides for the appointment of panel members.

Clause 439 provides for the remuneration and appointment conditions of panel members.

Clause 440 provides for the termination of appointment of panel members.

Clause 441 provides for the resignation of panel members.

Division 4—Role of tribunal members and panel members

Clause 442 provides for the role of the chairperson, tribunal and panel members.

Clause 443 provides for the disclosure of conflicts of interest.

Division 5—Constitution of tribunal for hearings

Clause 444 provides for how the tribunal is constituted for a hearing.

Division 6—Other provisions

Clause 445 provides for the institution of proceedings by the commissioner.

Clause 446 provides for contempt of tribunal.

Clause 447 provides for conduct that is contempt and an offence.

Clause 448 provides for the protection of members, legal practitioners and witnesses in tribunal proceedings.

PART 3—LEGAL PRACTICE COMMITTEE***Division 1—Preliminary***

Clause 449 provides for the main purpose of the Part.

Clause 450 provides for the definitions for the Part.

Division 2—Establishment, membership of committee and functions and powers

Clause 451 provides for the establishment of the Legal Practice Committee.

Clause 452 provides for membership of the committee.

Clause 453 provides for the term of appointment of members.

Clause 454 provides for the functions and powers of committee.

Clause 455 provides for administrative support for the committee by the commissioner.

Division 3—Provisions about committee members

Clause 456 provides for matters relating to the eligibility for membership of the committee.

Clause 457 provides for termination of the appointment of a committee member.

Clause 458 provides for the resignation of a committee member.

Clause 459 provides for the appointment of a deputy chairperson of the committee.

Clause 460 provides for the remuneration and allowances of lay members.

Division 4—Provisions about committee performing advisory functions

Clause 461 provides for the application of the division to the committee in performing its advisory functions.

Clause 462 provides the committee may conduct its business in the way it considers appropriate.

Clause 463 provides for the times and places of meetings.

Clause 464 provides for what is a quorum for the committee.

Clause 465 provides for presiding at meetings.

Clause 466 provides for the conduct of meetings.

Clause 467 provides for the keeping of minutes of meetings and records of resolutions.

Clause 468 provides for the disclosure of interests.

Division 5—Provisions applying to committee for hearings

Clause 469 provides for how the committee is to be constituted for a hearing.

Clause 470 provides for practice directions to be made in relation to committee hearings.

Clause 471 provides for the disclosure of interests.

Clause 472 provides for the protection of members.

PART 4—PROVISIONS APPLYING TO EACH DISCIPLINARY BODY

Division 1—Parties to proceedings

Clause 473 specifies the parties to a proceeding in a disciplinary body for a discipline application and matters relating to appearance.

Division 2—Conduct of proceedings

Clause 474 provides that a hearing before a disciplinary body must be open to the public, unless the disciplinary body otherwise directs.

Clause 475 provides for the procedure for hearing by a disciplinary body.

Clause 476 provides that a disciplinary body may decide whether or not proceedings before it are recorded.

Clause 477 provides for when a disciplinary body may proceed in the absence of a party.

Clause 478 provides for when a matter may be decided on affidavit evidence.

Clause 479 provides for the standard of proof.

Clause 480 provides that a disciplinary body may prohibit the publication of information in an order or the hearing of a discipline application.

Division 3—Powers of disciplinary body

Clause 481 provides that the disciplinary body has the power to disregard procedural lapses.

Clause 482 provides for the disciplinary body to give directions for hearings.

Clause 483 provides that a disciplinary body can require the person to attend a hearing at a stated time and place to give evidence or to produce stated documents or things.

Clause 484 provides in respect of the authentication of documents.

Division 4—Offences

Clause 485 provides for an offence for a person stating anything to a disciplinary body that the person knows is false or misleading.

Clause 486 provides for an offence for a person giving to a disciplinary body a document containing information the person knows is false or misleading.

PART 5—LEGAL PRACTITIONERS ADMISSIONS BOARD***Division 1—Preliminary***

Clause 487 provides for the main purpose of the Part.

Clause 488 provides for the definitions for the Part.

Division 2—Establishment and membership of board

Clause 489 establishes the Legal Practitioners Admissions Board.

Clause 490 provides for membership of the board.

Division 3—Board’s functions and powers

Clause 491 provides for the functions of the board.

Clause 492 provides for administrative support of the board by the law society.

Division 4—Provisions about board members

Clause 493 provides for a member’s term of appointment.

Clause 494 provides for a chairperson and deputy chairperson.

Clause 495 provides for eligibility for membership.

Clause 496 provides for termination of appointment of a board member.

Clause 497 provides for the resignation of a board member.

Division 5—Board business

Clause 498 provides for the board to conduct its business in the way it considers appropriate.

Clause 499 provides for the times and places of meetings.

Clause 500 provides for the quorum for the board to be 4 members.

Clause 501 provides for presiding at meetings.

Clause 502 provides for the conduct of meetings.

Clause 503 provides for the board to keep minutes of its meetings and a record of its resolutions.

Clause 504 provides for the disclosure of interests.

Division 6—Miscellaneous

Clause 505 provides for the application of certain Acts to the board.

**PART 6—QUEENSLAND LAW SOCIETY
INCORPORATED*****Division 1—Preliminary***

Clause 506 provides for the purpose of the Part.

Clause 507 provides for the definitions for the Part.

Division 2—Constitution and related matters about law society

Clause 508 provides for the continued existence of the law society.

Clause 509 provides for the functions of the law society.

Clause 510 provides for the powers of the law society.

Clause 511 provides in respect of the status of the law society.

Clause 512 provides for the law society's powers of delegation.

Division 3—Membership of law society

Clause 513 provides for the membership of the law society.

Division 4—Council and its membership and officers of the law society

Clause 514 provides for the Council of the law society.

Clause 515 provides for the law society to have a president, deputy president and vice-president.

Clause 516 provides for dealings with casual vacancies.

Clause 517 provides that the performance of a function or the exercise of a power is not affected by a vacancy in the membership of the council of the society or a defect in the appointment or election of a council member.

Clause 518 provides for the secretary and staff of the law society.

Division 5—Council meetings

Clause 519 provides that the law society may conduct its business and proceedings at council meetings.

Clause 520 provides for there to be a presiding member.

Clause 521 provides for a quorum.

Clause 522 provides for the conduct of council meetings.

Clause 523 provides for minutes to be kept.

Clause 524 provides for council members to be subject to disclosure of interest requirements.

Division 6—Law society may make rule

Clause 525 provides for the law society to make society rules.

Clause 526 provides for society rules notified by the Minister to be subordinate legislation.

Clause 527 provides for the public availability of a society rule.

Division 7—Miscellaneous

Clause 528 provides for how the society can start a proceeding.

Clause 529 provides for how the society can recover an unpaid amount.

CHAPTER 7—SUITABILITY REPORTS AND INVESTIGATIONS

PART 1—SUITABILITY REPORTS

Division 1—Preliminary

Clause 530 provides for the main purpose of the Part.

Clause 531 provides for the definitions for the Part.

Division 2—Police reports

Clause 532 provides for the circumstances where a relevant regulatory authority may ask for a police report.

Division 3—Health assessments

Clause 533 provides that a relevant authority may require a person to undergo a health assessment if a relevant authority believes a subject person may have a material physical or mental infirmity that may make the person unsuitable to engage in legal practice in this jurisdiction.

Clause 534 provides for the appointment of the health assessor.

Clause 535 provides for the health assessor conducting all or part of a health assessment to prepare a report about the assessment.

Clause 536 provides for the relevant authority that appoints a health assessor to be liable for the cost of the assessment.

Clause 537 provides for how the report may be used.

Division 4—General

Clause 538 provides for the confidentiality of suitability report.

Clause 539 provides for the operation of this Part in respect of the board and a relevant authority.

PART 2—INVESTIGATORS AND THEIR POWERS***Division 1—Preliminary***

Clause 540 provides for the main purpose of the Part.

Clause 541 provides for the definitions for the Part.

Division 2—Investigators

Clause 542 provides for the appointment and qualifications of an investigator.

Clause 543 provides for the appointment conditions and limit on powers of an investigator.

Clause 544 provides that the commissioner must issue an identity card to each investigator.

Clause 545 provides for the production or display of an identity card by an investigator.

Clause 546 provides for when an investigator ceases to hold office.

Clause 547 provides for resignation by an investigator.

Clause 548 provides for the return of identity card when a person ceases to be an investigator.

Division 3—Entry to places

Clause 549 provides for an investigator's powers to enter places.

Clause 550 provides in relation to entry with consent.

Clause 551 provides that an investigator may apply to a magistrate for a warrant for a place.

Clause 552 provides for the issue of a warrant.

Clause 553 provides for an application for warrant by electronic communication and duplicate warrant in urgent or special circumstances.

Clause 554 provides in relation to a defect in relation to a warrant.

Clause 555 specifies the procedure before entry under a warrant.

Division 4—Powers of investigators after entry

Clause 556 specifies the general powers of an investigator after entering places.

Clause 557 provides that an investigator may require the occupier of the place, or a person at the place, to give the investigator reasonable help and information.

Division 5—Power of investigators to seize evidence

Clause 558 provides for seizure of things at a place entered under section 550.

Clause 559 provides for an investigator to secure seized things.

Clause 560 makes it an offence for a person to tamper with seized things.

Clause 561 specifies the powers of the investigator in support of seizure.

Clause 562 provides that an investigator must give a receipt for it to the person from whom a thing was seized.

Clause 563 provides for the forfeiture of seized things.

Clause 564 provides for how forfeited things are to be dealt with.

Clause 565 provides for the return of seized things.

Clause 566 provides for the owner to have access to seized things.

Division 6—General enforcement matters

Clause 567 provides for notice of damage to be given to the owner if an investigator (or a person acting under the direction of an investigator) damages property.

Clause 568 provides for a person to claim compensation for loss or expense because of the exercise or purported exercise of a power under division 3, 4 or 5.

Clause 569 provides for an offence if a person states anything to an investigator that the person knows is false or misleading.

Clause 570 provides for an offence if a person gives a document to an investigator that contains information that the person knows is false or misleading.

Clause 571 provides an offence for obstructing investigators.

Clause 572 provides an offence for impersonating an investigator.

Division 7—Provisions about investigations relating to incorporated legal practices

Clause 573 provides for definitions for the division.

Clause 574 specifies the investigative powers of an ILP authority for audits and investigations in respect of an incorporated legal practice.

Clause 575 specifies the powers of an ILP authority to examine persons in relation to an incorporated legal practice investigation.

Clause 576 specifies an ILP authority's powers relating to the inspection of books of an incorporated legal practice.

Clause 577 specifies an ILP authority's powers to hold hearings for the purposes of an investigation of an incorporated legal practice.

Clause 578 specifies various matters in connection with an investigation that are capable of being unsatisfactory professional conduct or

professional misconduct by an Australian legal practitioner or a legal practitioner director.

CHAPTER 8—MISCELLANEOUS MATTERS

PART 1—JURISDICTION OF THE SUPREME COURT

Clause 579 provides that the Act does not affect the inherent jurisdiction and power of the Supreme Court in relation to the control and discipline of local lawyers and local legal practitioners. It also provides for that jurisdiction to extend to an interstate legal practitioner and for the Court to be able to make any order that a disciplinary body may make under the Act.

Clause 580 provides for the jurisdiction of Supreme Court in respect of applications and appeals.

Clause 581 provides for the Court to grant injunctions including in respect of conduct that would contravene the Act.

Clause 582 provides for certain proceedings to be determined by a judge without a jury.

PART 2—SUSPECTED OFFENCES, PARTICULAR ASSOCIATES AND OTHER MATTERS

Clause 583 provides for when relevant entities have to report suspected offences.

Clause 584 prohibits local legal practitioners without approval from having associates who are proscribed or convicted persons.

Clause 585 provides for the circumstances where offences by a corporation are also offences by executive officers.

Clause 586 provides that offences under the Act are summary offences.

Clause 587 provides for the time for bringing a proceeding for a summary offence under the Act.

Clause 588 specifies matters in relation to appointments and authority that may be presumed proof is required by reasonable notice.

Clause 589 provides for signatures to be evidence of the signatures that they purport to be.

Clause 590 provide for certain documents to be evidence of what they purport to be or contain.

PART 3—OTHER MATTERS

Clause 591 provides for sharing of information by entities with functions under the Act.

Clause 592 provides an offence for improper disclosure of information.

Clause 593 provides protection from liability for “Act officials” in certain circumstances.

Clause 594 provides for approved forms.

Clause 595 provides for the making of regulations.

PART 4—AMENDMENT OF ACTS

Clause 596 provides for Acts to be amended as provided in Schedule 1.

PART 9—TRANSITIONAL, SAVINGS AND REPEAL PROVISIONS

Division 1—Definitions for ch 8, pt 5

Clause 597 provides for the definitions for the Part.

Division 2—Transitional provisions relating to ch 2, pt 2 (Reservation of legal work and related matters)

Clause 598 provides that an act or omission that happened before commencement may be relevant to an offence under ch 2, pt 2.

Clause 599 provides in respect of proceedings for offences committed before the commencement.

Division 3—Transitional provisions relating to ch 2, pt 3 (Admission of legal practitioners)

Clause 600 provides in respect of applications for admission made before commencement but not heard by Supreme Court before the commencement.

Clause 601 provides that a reference in an Act to an applicant or application for admission as a barrister or for admission as a solicitor is a reference to an applicant or application for admission as a legal practitioner.

Division 4—Transitional provisions relating to ch 2, pt 4 (Legal Practice by Australian legal practitioners)

Clause 602 provides for the purposes of the division to be allowing for different arrangements for practising certificates for barristers and solicitors for the 2004-2005 year.

Clause 603 provides for actions before commencement that continue to have effect.

Clause 604 provides that applications for renewal immediately before commencement are to continue to be dealt with under the Queensland Law Society Act 1952. It also provides in respect of persons who were solicitors immediately before commencement to be treated as an Australian legal practitioner when applying for a practising certificate.

Clause 605 provides that sections 603 and 604 do not affect practising certificates in relation to the bar association. It provides in respect of persons who were barristers immediately before commencement to be treated as an Australian legal practitioner when applying for a practising certificate.

Clause 606 provides for transitional matters for professional indemnity insurance requirements until a regulation is made in the matter.

Division 5—Transitional provisions relating to ch 2, pt 7 (Fidelity cover)

Clause 607 provides for amounts payable to and from the fidelity fund before commencement to be able to be received or paid from the fund after the commencement. It also provides for amounts payable after commencement for defaults occurring before commencement to be paid after commencement.

Clause 608 provides for the continuation of a delegation by the law society council to a committee of management under the Queensland Law Society Act 1952.

Clause 609 provides in respect of claims for acts or omissions occurring before commencement.

Division 6—Transitional provisions relating to ch 2, pt 9 (Rules about those who may engage in legal practice in this jurisdiction)

Clause 610 provides for the continuation of rules of law society.

Clause 611 provides for the bar association not to have to comply with the newspaper notice requirements when recommending, for a barristers rule, the bar association rules in force immediately before the commencement of the section.

***Division 7—Transitional provisions relating to ch 3 (Complaints ,
investigation matters and discipline)***

Clause 612 provides for how complaints made to the law society before commencement and not finally dealt with are to be dealt with under this Act.

Clause 613 provides for how complaints made to the legal ombudsman before commencement but not finally dealt with are to be dealt with under this Act.

Clause 614 provides for the basis for a complaint in relation to conduct before commencement.

***Division 8—Transitional provisions relating to matters that are to
continue as external interventions under ch 4 (External interventions)***

Clause 615 provides for continued appointment of persons appointed under repealed part 2C of the *Queensland Law Society Act 1952*.

***Division 9—Transitional provisions relating to ch 6 generally
(Establishment of entities for this Act, and related matters)***

Clause 616 provides for arrangements to be made for the transfer of records from the Solicitors' Board and the Barristers' Board to the law society as secretary for the new board.

Clause 617 relate to the appointment to the committee or board of persons who are barristers at commencement but do not have practising certificates.

***Division 10—Transitional provisions relating to ch 6 (Establishment of
entities for this Act, and related matters), pt 6 (Queensland Law Society
Incorporated)***

Clause 618 provides for definitions for the division.

Clause 619 provides for things done under remade provisions to continue to have effect.

Clause 620 provides that the re-enacting of repealed provisions has no effect on the legal personalty or identity of the law society and for related matters.

Clause 621 provides that the re-enacting does not affect existing legal relationships.

Clause 622 provides for matters started under a repealed provision to be able to be finalised and dealt with under this Act.

Clause 623 provides for the continuation of office of members of the Council if there are no more than the permitted maximum of 12 members.

Clause 624 provides for the continuation of office of certain members of the Council if there are more than the permitted maximum of 12 at commencement.

Clause 625 provides for continuation of the respective offices of each of the presidential members.

Clause 626 provides for council membership to be able to be vacated under a society rule and for vacancies not to be filled after commencement until the start of the new council if the number of council members exceeds 12.

Clause 627 provides for the continuation of delegations in force before commencement.

Division 11—Transitional provisions relating to the Legal Practitioners Act

Clause 628 provides for the main purposes of the division.

Clause 629 provides for the the relocation of section 58 of the Legal Practitioners Act.

Clause 630 provides for the amendment and expiry of section 58 of the Legal Practitioners Act as relocated and for transitional issues to be dealt with under the admission rules.

Clause 631 provides for transitional provisions in respect of accounts kept by the law society under s 51 of the Legal Practitioners Act.

Clause 632 provides for the repeal of remaining provisions of Legal Practitioners Act.

Clause 633 provides for the interpretation of references to Legal Practitioners Act in other Acts and documents and related matters.

Clause 634 provides for the interpretation of references in documents or Acts to Acts mentioned in the Legal Practitioners Act and related matters.

Clause 635 provides for the preservation of appeal rights under the Legal Practitioners Act.

Division 12—Transitional provisions relating to the Queensland Law Society Act

Clause 636 provides for the main purposes of this division.

Clause 637 repeals the provisions of the QLS Act relating to the solicitors complaints tribunal.

Clause 638 repeals the provisions of the QLS Act relating to the legal ombudsman.

Clause 639 provides for the Commissioner to report on the legal ombudsman's functions for the 2003-2004 year.

Clause 640 provides for amendment of QLS Act as provided in Schedule 4.

Division 13—Transitional provisions for repeal of the Legal Profession Act 2003

Clause 641 provides in relation to the appointment of the Commissioner under the *Legal Profession Act 2003*.

Clause 642 repeals the *Legal Profession Act 2003*.

Division 14—Regulation-making power for transitional purposes

Clause 643 provides for a transitional regulation-making power to make provisions of a saving or transitional nature for any matters for which this

Act does not make sufficient provision to allow or facilitate the doing of anything to achieve the transition the operation of the Legal Practitioners Act, and the QLS Act to this Act. A transitional regulation may have retrospective operation to a day not earlier than the commencement of the section. The section expires after 1 year.

Schedule 1 provides for consequential amendments to other Acts.

Schedule 2 amends the *Legal Practitioners Act 1995*, section 58.

Schedule 3 is the Schedule to which *Legal Practitioners Act 1995*, section 58 as amended is to be relocated.

Schedule 4 amendment of *Queensland Law Society Act 1952*.

Schedule 5 is the dictionary for the definitions used in the Act.